

SERVED: October 27, 2000

NTSB Order No. EA-4863

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of October, 2000

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16065
v.)	
)	
IAN CHRISTOPHER O'MALLEY,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty rendered in this proceeding on September 19, 2000, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator that revoked the respondent's airman certificates (including his commercial pilot and flight instructor certificates) on allegations that he had

¹An excerpt from the hearing transcript containing the initial decision is attached.

violated sections 61.59(a)(1) and (2) of the Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 61.² For the reasons discussed below, the appeal will be denied.³

The Administrator's August 25, 2000 Emergency Order of Revocation, as amended at the hearing, alleges, among other things, the following facts and circumstances concerning the respondent:

1. You are now, and at all times mentioned herein were, the holder of Commercial Pilot Certificate No. 556691767.
2. On or about November 4, 1999, you presented to Federal Aviation Administration Aviation Safety Inspector George DeMartini, an Airman Certificate and/or Rating Application (FAA Form 8710-1) for the purpose of taking an Airline Transport Pilot, airplane multiengine certification test.
3. You signed said Application certifying, among other things, that you had acquired 1926 hours of total flight time, 1846 hours of pilot in command time, and 598 hours of Cross Country Pilot in Command.
4. At the time you signed said Application, you knew the hours referenced in paragraph 3 were false in that they contained hours you did not actually fly.
5. On or about November 4, 1999, you also presented your pilot logbook to Inspector DeMartini to verify the times you

²FAR sections 61.59(a)(1) and (2) provide as follows:

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false statement on any application for a certificate, rating, authorization, or duplicate thereof, issued under this part;

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part....

³The Administrator filed a reply brief opposing the appeal.

had listed on said Application, which logbook contained ten entries exceeding 23 hours of pilot time which you did not actually fly, to wit:

- (b) September 3, 1999, for 3.9 hours
- (c) September 6, 1999, for 1.5 hours
- (d) September 14, 1999, for 1.6 hours
- (e) September 15, 1999, for 1.5 hours
- (f) October 1, 1999, for 2.8 hours
- (g) October 2, 1999, for 3.5 hours
- (h) October 3, 1999, for 3.6 hours
- (i) October 13, 1999, for 3.5 hours
- (j) October 15, 1999, for 2.9 hours
- (k) October 27, 1999, for 3.0 hours

6. You presented your logbook to Inspector DeMartini, representing it to be accurate when, in fact, you knew it contained entries that were false.

The law judge concluded that the Administrator's evidence established that respondent had knowingly falsified the ATP certificate application and his pilot logbook as alleged in the complaint. He was not persuaded that respondent's inclusion, as creditable pilot time, of periods during which he was a non-crewmember observer on revenue segments of his employer's Part 135 flights, in two different aircraft types, was the product of either, as to the hours logged in a Beech King Air, an innocent mistake as to what the regulations allowed pilots to log or, as to the hours logged in a Beech Baron, inadvertent error in logging them as pilot flight time at all.

On appeal, respondent does not directly contest the law judge's findings to the effect that the application and logbook contained materially false entries.⁴ He maintains, nevertheless,

⁴At the same time, respondent, while not raising the question of materiality, submits that the fact that he did not need the 23 hours to meet the minimum pilot flight time requirements for an ATP certificate is indicative of a lack of

that the law judge erred in concluding that he intended to falsify those documents.⁵ We find no merit in the arguments advanced in support of this contention, for they amount to no more than an attack on the law judge's determination that respondent's exculpatory explanation for claiming flight time to which he was not entitled was not credible.⁶ The respondent has not identified a valid reason for disturbing the law judge's credibility assessment.⁷ It is not enough that he disagrees with the law judge's disposition of the issue.⁸

(..continued)
intent to falsify.

⁵"To succeed on a charge of intentional falsification, the Administrator must prove that a false statement was knowingly made in reference to a material fact." Administrator v. Richardson, NTSB Order EA-4820 (served January 28, 2000) at page 3, citing Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

⁶The law judge did not, as counsel for respondent suggests, rule that respondent could not record in his logbook, as one might in a diary, comments or notations concerning flight legs on which he was aboard to gain familiarity with his employer's charter operations. Rather, he indicated, in effect, that it must be clear to anyone reading the logbook that such familiarity flights were not reflected in the pilot flight time listings, as they were in this case.

⁷The Board will not overturn a credibility determination unless it has been shown to be arbitrary, inherently incredible, or clearly erroneous. See Administrator v. Alberto Rivera and Helivan Helicopters, Inc., NTSB Order EA-4419 (1996).

⁸See Administrator v. Klock, 6 NTSB 1530, 1531 (1989) (A law judge's credibility choices are not vulnerable to reversal on appeal on the ground that a more probable explanation for a party's conduct than the one accepted by the law judge was advanced).

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of
revocation are affirmed.

HALL, Acting Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY,
Members of the Board, concurred in the above opinion and order.